

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIAM BRADSHAW,

Petitioner,

vs.

B. CURRY, Warden,

Respondent.

No. C 08-1787 JF (PR)

ORDER TO SHOW CAUSE

Petitioner, a state prisoner proceeding pro se, seeks a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has paid the filing fee. The Court orders Respondent to show cause why the petition should not be granted.

STATEMENT

On December 4, 1987, Petitioner was sentenced to a term of fifteen years-to-life in state prison after his conviction for second degree murder in the Orange Superior Court. Petitioner challenges the Board of Parole Hearings' ("Board") decision denying him parole after his February 8, 2006 parole suitability hearing. Petitioner filed habeas petitions in the state superior court, state appellate court, and the state supreme court, all of which were denied as of March 14, 2007. Petitioner filed the instant federal petition on August 7, 2007 in the United States District Court for the Central District of

1 California. The petition was transferred to this Court on April 24, 2008 and filed in a new
 2 habeas action, case no. C 08-2025 JF (PR). This Court issued an order closing the C 08-
 3 2025 JF (PR) matter and directing the Clerk to transfer the documents to the instant
 4 habeas action.

5 DISCUSSION

6 A. Standard of Review

7 This Court may entertain a petition for writ of habeas corpus “in behalf of a person
 8 in custody pursuant to the judgment of a state court only on the ground that he is in
 9 custody in violation of the Constitution or laws or treaties of the United States.” 28
 10 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

11 A district court shall “award the writ or issue an order directing the respondent to
 12 show cause why the writ should not be granted, unless it appears from the application that
 13 the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

14 B. Petitioner’s Claims

15 As grounds for federal habeas relief, Petitioner alleges: (1) the denial of his federal
 16 liberty interest in parole is contrary to and an unreasonable application of the “some
 17 evidence” standard set forth in Superintendent v. Hill 472 U.S. 445 (1985), in violation of
 18 28 U.S.C. § 2254(d)(1); and (2) the denial of his federal liberty interest in parole is an
 19 unreasonable determination of the facts in light of the evidence presented, pursuant to §
 20 2254(d)(2), because “clear and convincing” evidence disproves any threat to the public if
 21 Petitioner was granted parole. Liberally construed, Petitioner’s claims are cognizable
 22 under § 2254. The Court orders Respondent to show cause why the petition should not be
 23 granted.

24 CONCLUSION

25 1. The Clerk shall serve by mail a copy of this order and the petition
 26 and all attachments thereto (docket no. 3) upon the Respondent and the Respondent’s
 27 attorney, the Attorney General of the State of California. The Clerk shall also serve a
 28 copy of this order on the Petitioner.

1 2. Respondent shall file with the Court and serve on Petitioner, **within sixty**
2 **days** of the date this order is filed, an answer conforming in all respects to Rule 5 of the
3 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should
4 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of
5 all portions of the state parole record that have been transcribed previously and that are
6 relevant to a determination of the issues presented by the petition.

7 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse
8 with the Court and serving it on Respondent **within thirty days** of his receipt of the
9 answer.

10 3. Respondent may file a motion to dismiss on procedural grounds in lieu of
11 an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
12 Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file
13 with the Court and serve on Respondent an opposition or statement of non-opposition
14 **within thirty days** of receipt of the motion, and Respondent shall file with the court and
15 serve on Petitioner a reply **within fifteen days** of receipt of any opposition.

16 4. It is Petitioner's responsibility to prosecute this case. Petitioner is reminded
17 that all communications with the Court must be served on respondent by mailing a true
18 copy of the document to Respondent's counsel. Petitioner must keep the Court and all
19 parties informed of any change of address by filing a separate paper captioned "Notice of
20 Change of Address." He must comply with the Court's orders in a timely fashion.
21 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
22 to Federal Rule of Civil Procedure 41(b).

23 IT IS SO ORDERED.

24 DATED: 5/8/08


JEREMY FOGEL
United States District Judge